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FILED
FEB 25 2016
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

February 23, 2016

State Bar Court
845 S. Figueroa Street, 3rd Floor
Los Angeles, CA 90017-2515

RE: RESPONSE TO NOTICE OF DISCIPLINARY CHARGES
MOTION TO DISMISS
State Bar Case No.: 15-O-14084
In the Matter of Lee A. Gross
State Bar No.: 153412

To Whom It May Concern:

I received a Notice of Disciplinary Charges filed by the State Bar of California in the above-referenced matter. This was my first direct notice from the State Bar that formal Disciplinary Charges were filed. I did not directly receive a Notice of Intent affording me the opportunity for an Early Neutral Evaluation Conference ("ENEC") or otherwise be given an opportunity to personally explain why the above Case is not warranted and should be dismissed.

I hereby move the State Bar Court to dismiss this action based on the following facts:

- (1) This Disciplinary Case No. 15-O-14084 arises from Respondent's affiliation in 2013 with a company called State Trust Legal;
- (2) Respondent Lee A. Gross previously entered into an Agreed Stipulation in Case No.14-O-00303, et al. (S229786) which was intended to fully resolve all matters in connection with Respondent's affiliation with State Trust Legal;
- (3) On June 22, 2015, Respondent and his attorney of record at the time, Scott B. Well, Esq. appeared at the offices of the State Bar of California in Los Angeles, California, for the sole purpose of signing the Agreed Stipulation;
- (4) The State Bar Counsel handling the above-Stipulation, Mr. Ashod Mooradian, met with Respondent and attorney Well on June 22, 2015, and at that time expressly represented to, and assured both Respondent and attorney Well, that if

Respondent and attorney Well signed the Stipulation, **no further disciplinary charges would be brought against the Respondent by the California State Bar in connection with Respondent's involvement with State Trust Legal**, barring a "deluge of new complaints." Based on the expressed assurances and promises by Bar Counsel, and relying on same, the Respondent and counsel signed the Stipulation; as such, the current Case should never have been brought against the Respondent and should now be dismissed with prejudice;

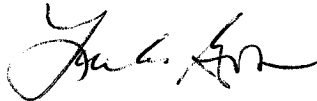
- (5) As further support of the fact that the intent of the Stipulation was to resolve all matters involving Respondent in connection with State Trust Legal, attached please find copies of e-mail messages between Respondent's counsel, Mr. Well, and State Bar Counsel, Mr. Mooradian. At all times relevant to the Stipulation's finalization, Respondent and his attorney were given no reason by Bar Counsel that the Stipulation would not resolve all matters concerning Respondent's involvement with State Trust Legal;
- (6) Respondent took Bar Counsel for his word as an officer of the Bar Court and a licensed member of the State Bar. Bar Counsel's representations must be honored by the Bar as he is an agent of the Bar. As such, this Case must be dismissed.

Finally, if the Bar Court elects not to honor and enforce the promises and assurances of its own Bar Counsel by dismissing this matter with Prejudice, Respondent would request the following:

- (1) That current Bar Counsel, Mr. Mooradian, be removed from this case as he has an obvious conflict of interest created by his making promises and assurances to Respondent and his attorney that the Bar would not bring any further disciplinary action against Respondent in connection with State Trust Legal; then apparently reneging on his promises and representations by bringing the current action against Respondent (Note-unfortunately this is not the only instance of material misrepresentation, prior instances include assuring Respondent and attorney Well that the Bar costs would be capped at \$3,000-\$4,000, only to renege on that representation and assert approximately \$24,000 in costs, with the only explanation "I goofed," and "it is what it is"; as well as refusing to include any applicable mitigating circumstances relating to this matter into the Stipulation, including but not limited to the fact that a Bar Investigator, Mr. Christopher Dukakis, specifically told Respondent on October 29, 2013, that Respondent had a stellar ethics record, but had been "duped by experienced con-men" with respect to Respondent's involvement with State Trust Legal (Bar Counsel refused to include this in the Stipulation perhaps to avoid the Supreme Court from knowing all the pertinent facts versus only those Bar Counsel wanted to include); and
- (2) That Respondent be afforded the rights he is entitled to in terms of proper notice of this matter. The Respondent's only direct communication from the Bar was the Notice of Disciplinary Charges just received. All prior communications from the Bar went to Respondent's former counsel, Mr.

Well, even though this is a new matter. Respondent believes he is entitled to notice directly from day one of any Complaint, Notice of Intent, etc.

Sincerely,



Lee A. Gross
Respondent

Enclosures

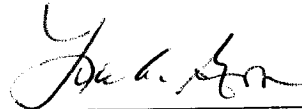
CERTIFICATE OF SERVICE

I hereby certify that I am the Respondent in the above-referenced matter, that I am over the age of eighteen, and that I mailed the original of this document to the following on February 23, 2016 via First-Class Mail, postage pre-paid, through the United States Postal Service at Irvine, California:

State Bar Court
845 S. Figueroa Street, 3rd Floor
Los Angeles, CA 90017-2515

Jayne Kim
Chief Trial Counsel
State Bar of California
180 Howard Street
San Francisco, CA 94105

I certify that the foregoing is true and correct. Executed at Irvine, California on February 23, 2016.



Lee A. Gross
Respondent

From: Scott Well <scottbwell@gmail.com>

Subject: Re: 15-O-14084

Date: February 3, 2016 at 3:41:48 PM PST

To: "Mooradian, Ashod" <Ashod.Mooradian@calbar.ca.gov>

Mr. Mooradian:

I am in receipt of your communication and have forwarded it to my client for review. I don't believe any additional discipline is warranted, for several reasons. First, we discussed the possibility of late complaints being received by the Bar and you assured me that there would be no additional filing of charges unless there were multiple new complaints or complaints outside the initial complaint period. My client and I relied on your representations in that regard when entering into the stipulated judgment (see my email of 5/21/15). Also, I'm sure you are aware that the government seized all of my client's documents pursuant to a Search Warrant for a different company, which prevented him from completing work on these cases because of the government intervention. The government created this problem, not my client, as he was intentionally prevented from completing the contracted work by the government, thereby directly causing the subsequent complaints. I am waiting for my client's response, and will notify you of his intent as soon as I hear back from him

Scott Well

From: **Scott Well** scottbwell@gmail.com
Subject: 15-O-14084
Date: January 26, 2016 at 1:10 PM
To: Mooradian, Ashod Ashod.Mooradian@calbar.ca.gov

Mr. Mooradian:

I am a bit perplexed by the letter I received today from you dated January 21, 2016 which is a standard "form letter" indicating you intend to file disciplinary charges against my client, Lee Gross. This case (Luc and Christian Fancois) was responded to on October 13 in response to Investigator Shelia Campbell's letter of September 3, 2015. I assume this is an oversight. If you recall, my client recently entered a stipulated Judgment with the Bar for numerous complaint numbers based on our negotiated settlement. During that process, you personally assured me that additional charges would not be filed for new complaints received for the same complaint period covered by the stipulation involving the same business. The ink isn't even dry on the Suspension ordered pursuant to that "global" settlement, and now you intend to file more charges because an additional complaint was received after we negotiated a disposition? Please review your notes and correspondence on this matter and respond at your earliest convenience. Thank you.

Scott Well
Attorney for Lee Gross

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Law Offices of Scott B. Well
2122 North Broadway
Santa Ana, CA 92706-2614
State Bar # 134322
(714)283-0600
scottbwell@gmail.com

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From: Mooradian, Ashod <Ashod.Mooradian@calbar.ca.gov>
Date: Fri, May 22, 2015 at 12:20 PM
Subject: RE: Gross Settlement
To: Scott Well <scottbwell@gmail.com>
Cc: "Kim, Ann" <Ann.Kim@calbar.ca.gov>

Scott:

I will discuss with my co-counsel. However, it seems the best option for your client is to take the 18 month offer and not object when the former clients claims are paid by CSF. That outcome seemingly is best because it means the restitution is paid sooner and it likely maximizes the time for your client's reimbursement to CSF.

If your client agrees, please send me the information and supporting proof for your client's restitution total so that if vetted can be written into the stipulation without delay. I could get you a draft stipulation by early next week.

Sincerely,

Ashod Mooradian

From: Scott Well [mailto:scottbwell@gmail.com] **Sent:** Friday, May 22, 2015 12:12 PM **To:** Mooradian, Ashod **Subject:** Re: Gross Settlement

Ashod:

Thanks for taking the time to speak with me last night. I have had a lengthy discussion with my client this morning about our conversation, and he is resigned to the fact he will need to settle this matter without trial. Based on my client's lack of income at this time, along with limited future prospects, it appears unlikely he will be able to make a large restitution payment within the first year. I wish he had the ability to pay upfront, as that would substantially change our settlement discussions, but that is out of my control. With that in mind, and your admitted understanding that this is not the typical "shyster" Attorney looking to make money illegally, I would ask you to consider imposing the lower one year suspension suggested by the settlement Judge, but without the and/until provision. That would give him the ability to earn an income sooner which would give a real chance of paying the restitution back within the 3 year probation period. Based on our discussions, I understand the cost of investigation would be limited to around \$3,000 which I'm confident he could find a way to pay within a year. I am also confident he could comply with all other terms of probation to avoid a probation violation proceeding. Again, the issue here is his present inability to pay the restitution without gainful employment. I'm sure the primary interest of the complaining parties is to receive restitution, and this type of disposition would give my client a better chance of being able to do so in a timely manner. I also believe a one year actual suspension is well within the normal range for similar cases based on my review of recent disciplinary proceedings which have been published.

The only other options he has are to accept the 18 month suspension you originally offered or resign with charges pending and leave the state, neither of which helps achieve the Bar's goal of securing timely restitution payments for victims. The "marketing executive" that brought Mr. Gross into this business stole about \$400,000 from the accounts and is the real culprit - and he is out of reach of the State Bar and not being prosecuted criminally. Mr. Gross is still seeking answers from Bank of America as to why they allowed this third party to

withdraw funds illegally from an IOLTA that he was not a signer on, let alone an Attorney. Seems unfair that Mr. Gross takes the hit while the "criminal" goes free. The State Bar investigator who interviewed Mr. Gross during the raid at his office was aware of this, and told Mr. Gross that he was a victim in this scam, and not considered a perpetrator. You can see the difficulty I am faced with based on the unique facts of this case. In any event, we can inform the Bar Court on Tuesday that we are actively engaged in settlement negotiations, and this case will not need to proceed to trial. I am hopeful we can continue to resolve our issues and come to an appropriate resolution that will serve the interests of our respective clients. Thanks again for your consideration.

Scott Well

On Thu, May 21, 2015 at 5:04 PM, Mooradian, Ashod <Ashod.Mooradian@calbar.ca.gov> wrote:

Mr. Well:

I just left you a voicemail regarding a return call as I would prefer to speak to you about this matter as opposed to email communications.

Please call me when you get this or are available.

Sincerely,

Ashod Mooradian

From: Scott Well [mailto:scottbwell@gmail.com] **Sent:** Thursday, May 21, 2015 3:00 PM **To:** Mooradian, Ashod **Subject:** Gross Settlement

Ashod:

It was a pleasure speaking with you this week, and I am hopeful that a resolution can be reached in this matter. The issue I am dealing with is that my client is not in a financial position to have realistic expectations of being able to pay restitution in a timely manner. He has not been practicing law, has no other source of income, and may be leaving the State to pursue other business interests in order to make a living. It also appears he has little choice in this matter other than settling or going to trial and taking the risk that he may lose one or more of the counts. I have explained that he would likely be punished more harshly, even if he wins several counts, and the costs would be higher. He has asked me whether voluntarily going on inactive status or another type of disposition may resolve the issue and avoid the financial obligations. I told him I didn't think there was any other alternative to settlement except going to trial and hoping for the best. He doesn't think the Bar will be able to get the witnesses here to testify, and many of the counts will go away due to lack of evidence. I explained the trip here would probably be a free vacation to California which they would likely accept if they were invited. And he may eventually bear the cost. That said, I will continue in good faith to finalize a settlement offer and communicate it to my client.

The terms of our tentative agreement as I understand them are as follows:

1) 3 years suspension, stayed pending successful completion of all probation terms.

2) 1 year actual suspension, if restitution paid within that time; if not, the actual suspension would continue until paid in full.

3) If the restitution was not paid within 2 years, rule 1.2 (c) (1) would apply, requiring petitioning the Court for reinstatement and compliance with all requirements of the rule.

4) Terms of probation would include quarterly reporting, completion of the ethics class, passing the MPRE exam, and notification of disciplinary action to all existing clients.

Also, the restitution amount would be based on all fees paid by the complaining victims in this case, which I calculate from the records on file as \$83,043.00. This amount is about \$6,585 less than your calculation, but would be determined by comparison of our records. I understand the Bar has the right to collect costs of investigation, which I would ask to be waived if possible.

~~Further, the Bar has the right to prosecute other complaints from the same period would be prosecuted by the Bar subsequent to a settlement and order by the Supreme Court.~~

I think that's everything, but if I have missed any major points or need to inform my client differently than the above, please let me know. Once our understanding is memorialized, I will convey all terms and hope for acceptance so we can draft the stipulation and resolve the matter. Thank you for your courtesy and cooperation.

Scott Well

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scottbwell@gmail.com